THE CITY OF SAN DIEGO

RECORDING REQUESTED BY:
THE CITY OF SAN DIEGO
AND WHEN RECORDED MAIL TO:

City of San Diego
Development Services Department
1222 First Ave., MS-501
San Diego, CA 92101

(THIS SPACE FOR RECORDER'S USE ONLY)

ENCROACHMENT MAINTENANCE AND REMOVAL AGREEMENT

P.T.S. APPROVAL NUMBER _____   P.T.S. PROJECT NUMBER: _____

In accordance with the provisions of Section 129.0715 of the San Diego Municipal Code, this agreement is made by and between the City of San Diego, a Municipal Corporation [City] and the owner or owner's duly authorized representative of real property [Property Owner], located at _____
_____
(Property Address)
and more particularly described as _____
_____
(Legal Description)
in the City of San Diego, County of San Diego, State of California [Property].

In consideration of the grant of permission by the City of San Diego to encroach into the public right-of-way [ROW] by installing and maintaining private improvements, to wit: _____
_____
(Describe Improvement)
[Encroachment] over, under, and across the ROW for the use and benefit of the Property, Property Owner covenants and agrees with the City Of San Diego as follows:

(a) This agreement shall run with the land.

(b) The Encroachment shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the Property Owner(s) and the successors in interest.

(c) With respect to any liability, including but not limited to claims asserted, demands, causes of action, costs, expenses, losses, attorney fees, damages, expenses or payments that the City may sustain or incur in any manner for damages or injuries, including those to any person (including disability, dismember-ment, illness damages, or death) or property, arising from, related to, or resulting from the construction, maintenance, state of use, repair, or presence of the Encroachment, the Property Owner agrees to defend, indemnify, protect and hold harmless the City, its agents, officers, and employees from and against any and all liability.

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DS-3237 (01-07)

Also covered by this Section is liability arising from, related to, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees that may be in combination with active or passive negligent acts or omissions of the Property Owner, its employees, agents or officers, or any third party. The Property Owner's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees.

Property Owner further agrees to pay any and all costs the City incurs to enforce the indemnity and defense provision above.

(d) The Property Owner(s) shall remove, relocate or restore the Encroachment as directed by the City Engineer within thirty (30) calendar days of written notice from the City, or in the case of an emergency, as determined by the City, the City may request that the work be done immediately or within less than thirty (30) calendar days. If the Property Owner(s) fails to remove, relocate or restore or otherwise comply with the direction of the City Engineer regarding the Encroachment, the City may cause the work to be done, and the costs thereof shall be a lien against the property. The City's request to remove, relocate, or restore the encroachment shall not be arbitrary or without reason.

(e) For structures encroaching over or under a public facility within a right-of-way or easement, the owners agree to provide an alternate right-of-way and to relocate said public facility to a new alignment, all without cost or expense to the City, whenever it is determined by the City that the Facility cannot be economically placed, replaced, or maintained due to the presence of the Encroachment.

(f) Whatever rights and obligations were acquired by the City with respect to the rights-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the Encroachment.

(g) The property Owner shall maintain a policy of liability insurance with the City of San Diego and its respective elected officials, officers, employees, agents, and representatives named as additional insureds, in an amount approved by the city, which will protect the City from any potential claims that may arise from the Encroachment.

_____
(Signature)

_____
(Print Name & Title)

_____
(Company Organization Name)

_____
(Date)

See Attached Exhibit(s): _____

See Drawing Number(s): _____

APPROVED:

_____
City Control Engineer

Date: _____

NOTE: ALL SIGNATURES MUST INCLUDE NOTARY ACKNOWLEDGMENTS PER CIVIL CODE SEC. 1180 ET.SEQ.